

### **REMARKS**

Claims 1-8 and 39-61 are currently pending in the subject application and are presently under consideration.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

#### **I. Rejection of Claims 1-8 and 39-61 Under 35 U.S.C. §103(a)**

Claims 1-8 and 39-61 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ephrati, *et al.* (US 7,296,001, hereinafter referred to as “Ephrati”). Withdrawal of this rejection is respectfully requested for at least the following reasons. Ephrati does not teach or suggest all the claimed features.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) ***must teach or suggest all the claim limitations***. In addition, there must be a reasonable expectation of success to make the proposed combination. *See In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) *citing In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006).

The claimed subject matter relates in part to a multiple criterion buying and selling model that can correlate (*e.g.*, match) criteria defined by a buyer with criteria defined by the sellers. In addition, sellers can be informed of buying criteria that does not match their own seller criteria. For example, the sellers of a particular good or service can define a set of minimum inputs and other criteria such as quality ratings of the goods (*see* page 11, lines 4-7; page 16, lines 15-21; Fig. 8b, element 303), while the buyers can enter criteria that is important to them such as warranty, of which the sellers may not have listed in their own criteria, or even be aware it would be of interest to buyers (*see* page 2, lines 24-25). Hence, the model can inform sellers of buyers’ input criteria that the sellers did not list as their own criteria (*see* page 11, lines 13-15), and output deals in real time based upon the same or other criteria.

In particular, Independent claim 1 (and similarly independent claims 40, 47, 50-52) recites, “**notifying** the seller of the particular product or service **when the buying criteria does not match the seller criteria.**” The Examiner has cited no art that reads on these features in the context of a matching buyer and seller criteria as claimed. Rather, to reject all claims, the Examiner relies on Ephrati, which is simply a system to facilitate negotiations. Central to the Examiner’s analysis -- in fact the only support whatsoever provided -- is the notion that a counteroffer from negotiating parties can serve as the notification to the seller that a buyer has buying criteria that differs from that of the seller. However, buying criteria is expressly detailed in all independent claims to, *inter alia*, be matched to seller criteria in order to output a list of suitable deals to the buyer. For example, independent claim 47 (and similarly independent claims 1, 40, 50, 51, 52) recites, “**matching at least one deal of the plurality of deals that meets at least one buyer defined price and non-price buying criteria**, the non-price criteria including at least one distribution criterion” and “**outputting** a list of the one or more **matching deals** to the buyer in real time.”

In contrast, Ephrati performs no matching at all, and the Examiner has not even argued to the contrary, or responded with support when applicant’s representatives underscore such shortcomings. Ephrati does not match buying criteria to seller criteria. Ephrati does not output a list of matching deals. Rather, the Examiner has rejected all portions of every single claim based entirely on the interpretation that a counteroffer of Ephrati provides some type of notification to the seller. Yet, even these features are not taught by Ephrati when considering, as the Examiner must, any of the instant claims as a whole (*e.g.*, in the entirety).

Most particularly, if, as the Examiner assumes, the counteroffer represents buyer criteria, then that data (*e.g.*, buyer criteria included in the counteroffer) must also be used to perform the claimed matching aspects, or else the counteroffer is insufficient to read upon these claimed features. However, as detailed above, Ephrati does not match buying criteria to seller criteria; does not output a list of matching deals; and does not teach or suggest virtually any other claimed feature. In fact, Ephrati cannot possibly provide such features as matching and outputting a list of matching deals because the criteria to be matched is, as explained and relied upon by the Examiner’s analysis, included in a counteroffer. Yet a counteroffer is information that is not useful for matching criteria between buyers and sellers, since it only occurs, if at all, after negotiations between buyers and sellers have already begun.

For at least the foregoing reasons, all rejections should be withdrawn.

**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP106US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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